

9 FAM 41.51 Exhibit II

41.51 EXHIBIT II FORM DSL-999

GENERAL INFORMATION FOR TREATY TRADERS & TREATY INVESTORS



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Section 101(a)(15)(E) of the Immigration and Nationality Act provides nonimmigrant visa status for a national of any of the countries with which the United States maintains an appropriate treaty of commerce and navigation, who is coming to the United States to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing a substantial amount of capital.

Requirements for a Treaty Trader (E-1) nonimmigrant visa are:

- (1) The applicant must be a national of a treaty country.
- (2) The trading firm for which the applicant is coming to the United States must have the nationality of the treaty country.
- (3) The international trade must be "substantial" in the sense that there is a sizable and continuing volume of trade.
- (4) The trade must be principally between the United States and the treaty country, which is defined to mean that more than 50% of the international trade involved must be between the United States and the country of the applicant's nationality.
- (5) Trade means the international exchange of goods, services and technology. Title of the trade items must pass from one party to the other.
- (6) The applicant must be employed in a supervisory or executive capacity, or possess highly specialized skills essential to the efficient operation of the firm. Ordinary skilled or unskilled workers do not qualify.

Requirements for a Treaty Investor (E-2) nonimmigrant visa are:

- (1) The investor, either a real or corporate person, must be a national of a treaty country.

(2) The investment must be substantial. It must be sufficient to ensure the successful operation of the enterprise. The percentage of investment required for a low-cost business enterprise is generally higher than the percentage of investment required for a high-cost enterprise.

(3) The investment must be a real operating enterprise. Speculative or idle investment does not qualify. Uncommitted funds in a bank account or similar security are not considered an investment.

(4) The investment may not be marginal. It must generate significantly more income than just to provide a living to the investor and family, or it must have a significant economic impact in the United States.

(5) The investor must have control of the funds, and the investment must be at risk in the commercial sense. Loans secured with the assets of the investment enterprise are not allowed.

(6) The investor must be coming to the U.S. to develop and direct the enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive or highly specialized skills capacity. Ordinary skilled and unskilled workers do not qualify.

To apply for a Treaty Trader (E-1) or Treaty Investor (E-2) visa, an applicant must first establish that the trading enterprise or investment enterprise meets the requirements of the law. The consular officer will provide the applicant with special forms for this purpose. Each applicant must submit a nonimmigrant visa application form to establish his or her entitlement to the visa status.

Holders of E visas may reside in the United States as long as they continue to maintain their status with the enterprise. Spouses and children of any nationality may receive derivative E visas in order to accompany the principal alien. Dependents are not authorized to work in the United States.

